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No. 98-1886

In the

Supreme Court of the United States

MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND,

Petitioner,

v.

ONE 1995 CORVETTE VIN #1G1YY220585103433,

Respondent.

On Petition For a Writ of Certiorari to the Court of Appeals of Maryland

BRIEF OF THE STATES OF CALIFORNIA, ARIZONA, ARKANSAS, COLORADO, FLORIDA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, OHIO, OKLAHOMA, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA, UTAH, VERMONT AND VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Should this Court reconsider its decision in *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), that the exclusionary rule applies to a civil *in rem* forfeiture proceeding, in light of subsequent cases that undermine that decision?

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STATEMENT OF AMICI INTEREST

The amici States have substantial interests in establishing that the exclusionary rule does not apply to civil forfeiture proceedings. The state interests most directly at stake are effective law enforcement and crime prevention, as well as ascertaining the truth in judicial proceedings and inspiring confidence in court decisions. When the exclusionary rule is applied to the context of civil forfeitures, these interests are impeded without sufficient justification. The amici States join Maryland in urging the Court to grant the petition and address the important question presented.

REASONS FOR GRANTING THE WRIT

Maryland's petition identifies compelling reasons why certiorari should be granted. The Court's recent decisions are irreconcilable with the theoretical underpinnings of *Plymouth Sedan* and cast substantial doubt on its continued viability. Any minimal benefit of deterring improper police conduct by applying the exclusionary rule in the civil forfeiture context is outweighed by the resulting social costs. The amici States emphasize and advance two slightly different points. First, they describe how the application of the exclusionary rule to civil forfeitures unjustifiably hampers the States' goals of reducing crime, discerning the truth in court proceedings, and fostering confidence in judicial determinations. Second, they demonstrate why accepting this case for review is countenanced by the Court's stare decisis principles.

I. THE APPLICATION OF THE EXCLUSIONARY RULE TO CIVIL FORFEITURES SIGNIFICANTLY IMPEDES IMPORTANT STATE INTERESTS.

The application of the exclusionary rule to civil forfeitures is a matter of critical importance to the States because it impairs their interests in reducing crime, ascertaining the truth in judicial proceedings, and promoting public trust in court decisions. These heavy burdens outweigh any benefit

conferred by the remote possibility that the application of the rule to civil forfeitures deters improper police conduct.

It is long accepted that civil forfeiture helps to reduce crime by serving a variety of important law enforcement functions. Most immediately, it retrieves contraband from the hands of criminals and removes the instrumentalities of crime from general circulation. *Bennis v. Michigan*, 516 U.S. 442, 452 (1996). Less directly, but equally important, civil forfeiture's "non-punitive goal of ensuring that persons do not profit from their illegal acts" provides a disincentive for those contemplating wrongdoing by confiscating the profits and tools of criminal activity. *United States v. Ursery*, 518 U.S. 267, 291 (1996). Not only does civil forfeiture discourage potential criminals, it encourages others "to take care in managing their property and ensures that they will not permit that property to be used for illegal purposes." *Id.* at 290. Finally, proceeds obtained through civil forfeiture serve the remedial purposes of reimbursing law enforcement costs and funding crime prevention and victim assistance programs. *See United States v. Tilley*, 18 F.3d 295, 299 (5th Cir. 1994).

These important State objectives are directly hindered when the exclusionary rule is applied to prevent civil forfeitures. When forfeitures fail because of the rule, weapons, vehicles and other tools that have in fact been used in criminal activity remain available for further illegal use; and the judicial message conveyed to owners is that they may relax their diligence in keeping property from becoming entangled in crime. When ships that have transported narcotics, contraband or illegal aliens are released due to the exclusionary rule, they are ready to sail to new ports for the resumption of illicit operations. When profits of crime cannot be retained because of the exclusionary rule, they are free to be reinvested in the expansion of criminal enterprises.

Equally important, because it excludes relevant and material evidence, the application of the exclusionary rule deflects from

the truth-finding process and results in judicial determinations that fail to reflect the facts. Although usually discussed in criminal cases, the States' interests in ascertaining the truth and fostering public confidence in judicial proceedings are no less important in civil contexts. "The State has a strong interest in the truth-seeking function." *James v. Illinois*, 493 U.S. 307, 320 (1990) (Stevens, J., concurring). "The ends of . . . justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 408 (1988).

These costs vastly outweigh any benefit conferred by the remote possibility that the application of the rule in civil forfeiture proceedings may deter improper police conduct. *See Pennsylvania Bd. of Probation and Parole v. Scott*, 524, U.S. 357, ___, 118 S. Ct. 2014, 2022 (1998) ("We have never suggested that the exclusionary rule must apply in every circumstance in which it might provide marginal deterrence"). Law enforcement officers are given ample incentive to act lawfully by the application of the rule in criminal cases, and by the specter of civil liability under 42 U.S.C. § 1983 and similar laws. It belies reason to believe that law enforcement officers would not only jeopardize criminal convictions, but also expose themselves to personal liability, simply to secure a civil forfeiture. *See People v. $241,600 U.S. Currency*, 67 Cal.App.4th 1100, 1113 (1998) (rejecting the application of the rule to civil forfeitures). Because the social costs of applying the exclusionary rule to civil forfeitures are extraordinarily high, while the deterrence benefits are minor or imaginary, the amici States urge the Court to seize this opportunity to reconsider its holding in *Plymouth Sedan* by granting Maryland's petition.

II. THIS CASE PRESENTS COMPELLING AND SPECIAL FACTORS JUSTIFYING THE RECONSIDERATION OF *PLYMOUTH SEDAN.*

Although the Court approaches the reconsideration of its decisions with caution, "[s]tare decisis is not an inexorable command," *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), or a "mechanical formula of adherence to the latest decision." *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 241 (1970). As the Court recognized in *Patterson v. McClean Credit Union*, "[o]ur precedents are not sacrosanct, for we have overruled prior decisions where the necessity and propriety of doing so has been established." 491 U.S. 164, 172 (1989). Here, the necessity and propriety of reviewing *Plymouth Sedan* is demonstrable.

First, the logic upon which *Plymouth Sedan* is based is faulty and has been entirely undermined by more recent decisions of the Court. "[W]hen governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.'" *Payne v. Tennessee*, 501 U.S. at 827 (quoting *Smith v. Allwright*, 321 U.S. 649, 665 (1944), and collecting examples). As Maryland aptly points out in its petition, *Plymouth Sedan* is no longer persuasive because it rests on the erroneous assumption that civil forfeiture is quasi-criminal, is irreconcilable with recent Court decisions, and wrongly failed to weigh the substantial social costs against the minimal benefits of applying the exclusionary rule to civil forfeitures.

Many lower courts have recognized that *Pymouth Sedan* is no longer supported by a reasoned foundation, and have all but cried out for its reconsideration. Indeed, the Maryland Court of Special Appeals in this case proclaimed that the "formal obituary" of *Plymouth Sedan* is "devoutly to be wished." Pet. App. 43a. *See also United States v. $31,697.59 Cash*, 665 F.2d 903, 904 (9th Cir. 1982) (noting that "[t]he importance of [*Plymouth Sedan*] has been diminished dramatically"); *Morale*

v. Grigel, 422 F. Supp. 988, 1000 (D.N.H. 1976) (remarking that *Plymouth Sedan* has been "severely undermined"); *State v. One 1990 Chevrolet Corvette*, 695 A.2d 502, 507 (R.I. 1997) (finding that *Plymouth Sedan* is of "dubious authority"). The Court should heed these entreaties, and accept this opportunity to reconsider a decision that has lost its credibility and persuasive force.

The Court has appreciated the importance of reviewing an anomalous decision that lower courts are reluctantly, albeit obligingly, applying. *See, e.g., State Oil Co. v. Khan*, 522 U.S. 3, 7 (1997) (overruling *Albrecht v. Herald Co.*, 390 U.S. 145 (1968), which had been followed by the Seventh Circuit notwithstanding its "infirmities, [and] its increasingly wobbly, moth-eaten foundations" 93 F.3d 1358, 1363 (7th Cir. 1996)). Stare decisis does not prevent reconsideration of a decision when "related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) (citing *Patterson v. McLean Credit Union*, 491 U.S. at 173-174). The Court should grant certiorari here to confront the inescapable reality that *Plymouth Sedan* makes little sense and should no longer be forced upon a reluctant judiciary.

Second, stare decisis concerns are "reduced" in cases, such as this one, that involve a procedural rule. *Hohn v. United States*, 524 U.S. 236, ___, 118 S. Ct. 1969, 1977 (1998). This principle is based on the recognition that procedural rules, unlike substantive matters, do not ordinarily engender detrimental reliance. In the context of this case, criminals cannot seriously contend that they have more freely engaged in illicit activity in reliance on *Plymouth Sedan*'s holding that the exclusionary rule applies to civil forfeitures. While it is one thing to upset established law with regard to substantive rights that have been widely accepted, it is another thing altogether to insist on dogmatic adherence to interpretations of procedural

rules applicable in settings that are only indirectly related to the challenged activity.

Third, the force of stare decisis is further lessened because the question presented is constitutional, not statutory. The burden of advocating the abandonment of an established precedent is relaxed where the Court is asked to overrule a point of constitutional law. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). This is because, unlike a constitutional decision, a statutory interpretation can be reviewed by the legislature if it dislikes what the Court has done. *See, e.g., Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 424 (1986).

Fourth, overruling *Plymouth Sedan* will restore sound principles firmly grounded in tradition.

> Remaining true to an 'intrinsically sounder' doctrine established in prior cases better serves the values of stare decisis than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error and would likely make the unjustified break from previously established doctrine complete. In such a situation, 'special justification' exists to depart from the recently decided case.

Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 231 (1995).

This case presents exactly such a situation. Since the Founding, contraband and vehicles carrying it have been considered forfeitable. "[A]lmost immediately after adoption of the Constitution, ships and cargoes involved in customs offenses were made subject to forfeiture under federal law." *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974) (footnote omitted). These forfeitures were *in rem* actions against the contraband itself, *United States v. Ursery*, 518 U.S. at 277, in which the exclusionary rule did not apply.

Plymouth Sedan's imposition of the rule to civil forfeitures is recent and aberrational. The Court should seize this opportunity to reconsider *Plymouth Sedan* and restore the historic, and sensible, law governing civil forfeiture, under which the exclusionary rule was inapplicable.

In sum, principles of stare decisis attest to the propriety of granting Maryland's petition here. As perhaps best explained by the Court:

> We do not minimize the role that stare decisis plays in our jurisprudence. That role is somewhat reduced, however, in the case of a procedural rule such as this, which does not serve as a guide to lawful behavior. It is reduced all the more when the rule is not only procedural but rests upon an interpretation of the Constitution. And we think stare decisis cannot possibly be controlling when, in addition to those factors, the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court.

United States v. Gaudin, 515 U.S. 506, 521 (1995) (citations omitted). Maryland's petition presents just such a case, and should be granted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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